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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/691,429

10/22/2003

Gary B. Simon

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2131

21005

7590

09/22/2004

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EXAMINER

SWARTHOUT, BRENT

ART UNIT

PAPER NUMBER

2636

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/691,429

**Applicant(s)**

SIMON ET AL.

**Examiner**

Brent A Swarthout

**Art Unit**

2636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 33-64 is/are pending in the application.
- 4a) Of the above claim(s) 45-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-36 and 38-44 is/are rejected.
- 7) ☒ Claim(s) 37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 09152004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 33-36,38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over ATAS, or Arpino (216) in view of Hilt, either further in view of Fraughton et al.

Arpino teaches a method of providing weather information for an airport to pilots comprising determining weather conditions 11-17, monitoring a radio frequency for a preset protocol indicative of pilot access to weather data (col.4, lines 49-59), broadcasting a weather advisory via transmitter 35, responsive to detection of the preset protocol, except for specifically stating that the radio frequency is for the airport, or that frequency must be inactive before weather data can be broadcast.

Hilt teaches desirability of transmitting a pilot request to an airport location over the airport Unicom frequency (col.2).

ATAS teaches pilot transmission of coded signal on UNICOM frequency to request weather advisory, whereby a receiver listens to make sure the air is clear before transmitting a response (page 5).

Fraughton teaches desirability of waiting until a common aircraft frequency is inactive before attempting to send a transmission (col. 10, lines 21-31).

It would have been obvious to use a signal interference reduction technique as taught by Fraughton in conjunction with the weather data transmission system as disclosed by either ATAS or Arpino and Hilt, in order to reduce the amount of signal interference on a common frequency used by multiple aircraft.

Regarding claims 36 and 39, Arpino teaches desirability of periodically transmitting weather data without being prompted (col. 4, lines 57-59).

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

b. Claims 40-44 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 5,565,863 in view of either ATAS, or Arpino (216) and Hilt, both further in view of Fraughton et al.

i. Simon teaches the desirability of transmitting a message that a system has weather data available (claim 13).


(1) It would have been obvious to utilize a message of weather data available in conjunction with a system as disclosed by either ATAS, or Arpino (216) and Hilt, both further in view of Fraughton, in order to only send out weather data when desired, thus leading to less congestion of airwaves.

3. Claim 37 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. No written consent to the filing of the reissue application by all of the assignees has been received. Application will not be allowed without submission of such consent.
5. No establishment of ownership interest in the Patent 6,181,260 by the assignees has been submitted. Such establishment of ownership must be submitted.
6. Certificate of Correction changes must be entered in the reissue application without bracketing or underlining. The change made in the COC on 10-23-01 to claim 17 has not been entered in the reissue application. Applicant must submit an amendment for such change .
7. No evidence that the original Patent has been surrendered is evident in the application. Evidence of such should be submitted.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent A Swarthout whose telephone number is 571-272-2979. The examiner can normally be reached on M-F from 6:30 to 4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Hofsass, can be reached on 571-272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Brent A Swarthout  
Examiner  
Art Unit 2636

**BRENT A. SWARTHOUT  
PRIMARY EXAMINER**